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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 **ETHELYN HOLMES,** ) Case No. '11CV1173 JM BGS  
12 )  
13 Plaintiff, ) **COMPLAINT FOR VIOLATION**  
14 ) **OF FEDERAL FAIR DEBT**  
15 vs. ) **COLLECTION PRACTICES ACT**  
16 ) **AND ROSENTHAL FAIR DEBT**  
17 **ALLSTATE FINANCIAL** ) **COLLECTION PRACTICES ACT**  
18 **SERVICES, INC., a corporation;** )  
19 **MICHAEL O'CONNOR, an** )  
20 **individual,** )  
21 Defendant. )  
22 \_\_\_\_\_ )

23 **I. INTRODUCTION**

24 1. This is an action for damages brought by an individual consumer for  
25 Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §  
26 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection  
27 Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of  
28

1 which prohibit debt collectors from engaging in abusive, deceptive, and unfair  
2 practices.  
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).  
6

7 **III. PARTIES**

8 3. Plaintiff, Ethelyn Holmes (“Plaintiff”), is a natural person residing in  
9 San Diego county in the state of California, and is a “consumer” as defined by the  
10 FDCPA, 15 U.S.C. §1692a(3) and is a “debtor” as defined by Cal Civ Code  
11 §1788.2(h).  
12

13 4. At all relevant times herein, Defendant, Allstate Financial Services,  
14 Inc. (“Defendant ALLSTATE”) was a company engaged, by use of the mails and  
15 telephone, in the business of collecting a debt from Plaintiff which qualifies as a  
16 “debt,” as defined by 15 U.S.C. §1692a(5), and a “consumer debt,” as defined by  
17 Cal Civ Code §1788.2(f). Defendant ALLSTATE regularly attempts to collect  
18 debts alleged to be due another, and therefore is a “debt collector” as defined by  
19 the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA, Cal Civ Code §1788.2(c).  
20  
21

22 5. At all relevant times herein, Defendant, Michael O’Connor  
23 (“Defendant O’Connor”) was owner of Defendant ALLSTATE. As an officer,  
24 shareholder and/or director of Defendant ALLSTATE, Defendant O’Connor was  
25 responsible for the overall success of the company. Defendant O’Connor is a  
26  
27  
28

1 “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA,  
2 Cal Civ Code §1788.2(c): he materially participated in collecting debt by  
3 occupying a position of critical importance to Defendant ALLSTATE’s business;  
4 as the owner of Defendant ALLSTATE, he exercised control over the affairs of a  
5 debt collection business; and he was regularly engaged, albeit more often  
6 indirectly than directly, in the collection of debts through her involvement in  
7 Defendant ALLSTATE’s affairs and Defendant O’Connor continued to play a  
8 key role in maintaining and expanding Defendant ALLSTATE’s debt collection  
9 activities throughout the time in question.

#### 14 **IV. FACTUAL ALLEGATIONS**

15 6. At various and multiple times prior to the filing of the instant  
16 complaint, including within the one year preceding the filing of this complaint,  
17 Defendant ALLSTATE contacted Plaintiff in an attempt to collect an alleged  
18 outstanding debt.

21 7. In February 2011, Defendant initially contacted Plaintiff in  
22 connection with an attempt to collect an alleged debt.

24 8. Defendant is attempting to collect an alleged debt that was incurred  
25 through a Gold’s gym membership.

27 9. In 2008, Plaintiff joined a gym membership, Fitzone program, on a  
28 month to month basis, without a yearly contract or cancellation fees.

1 10. When the Fitzone program was shut down, Plaintiff's membership  
2 was converted to a Gold's membership, maintaining a month to month payment.  
3

4 11. Defendant falsely claimed that Plaintiff owed approximately \$800 in  
5 monthly fees and cancellation charges, where no such charges should exist under  
6 Plaintiff membership plan.  
7

8 12. Defendant used false and deceptive practice in connection with an  
9 attempt to collect an alleged debt, including but not limited to, failing to disclose  
10 the true identity of Defendant during a telephone communication.  
11

12 13. On more than one occasion, Defendant failed to disclose that the  
13 communication was from a debt collector attempting to collect an alleged debt.  
14

15 14. On more than one occasion, Defendant threatened further legal  
16 action against Plaintiff, for failure to pay an alleged debt.  
17

18 15. On more than one occasion, Defendant threatened seizure and/or  
19 garnishment of Plaintiff's property or wages for failure to pay an alleged debt.  
20

21 16. Defendant has failed to provide written notice within 5 days of the  
22 initial contact.  
23

24 17. Defendant ALLSTATE's conduct violated the FDCPA and the  
25 RFDCPA in multiple ways, including but not limited to:  
26

27 a) Falsely representing the character, amount, or legal  
28 status of Plaintiff's debt (§1692e(2)(A));

- b) Using false representations and deceptive practices in connection with collection of an alleged debt from Plaintiff (§1692e(10));
- c) Failing to notify Plaintiff during the initial communication with Plaintiff that the communication was an attempt to collect a debt and any information obtained would be used for that purpose (§1692e(11));
- d) Failing to notify Plaintiff during each collection contact that the communication was from a debt collector (§1692e(11));
- e) Falsely representing or implying that nonpayment of Plaintiff's debt would result in the seizure, garnishment, attachment, or sale of Plaintiff's property or wages, where such action is not lawful or Defendant did not intend to take such action (§1692e(4));
- f) Threatening to take an action against Plaintiff that cannot be legally taken or that was not actually intended to be taken (§1692e(5));
- g) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (§1692d));
- h) Failing to provide Plaintiff with the notices required by 15 USC § 1692g, either in the initial communication with Plaintiff, or in writing within 5 days thereof (§1692g(a));
- i) Falsely using a business, company or organization name other than the true name of Defendant's business, company or organization (§1692e(14));

- j) Failing to notify Plaintiff during the initial communication with Plaintiff that the communication was an attempt to collect a debt and any information obtained would be used for that purpose (§1692e(11));
- k) Failing to notify Plaintiff during each collection contact that the communication was from a debt collector (§1692e(11));
- l) Threatening Plaintiff that nonpayment of Plaintiff's debt may result in the arrest of Plaintiff or the seizure, garnishment, attachment or sale of any property or the garnishment or attachment of wages of Plaintiff, where such action was not in fact contemplated by the debt collector and permitted by the law (Cal Civ Code §1788.10(e));
- m) Threatening to take an action against Plaintiff that is prohibited by § 1788 of the California Civil Code (Cal Civ Code §1788.10(f)); and
- n) Falsely representing that a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt is made (Cal Civ Code §1788.13(j)).

18. Defendant O'Connor as owner of Defendant ALLSTATE is directly responsible for Defendant ALLSTATE's violations.

19. As a result of the above violations of the FDCPA and RFDCPA, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and

1 Defendants are liable to Plaintiff for Plaintiff's actual damages, statutory  
2 damages, and costs and attorney's fees.  
3

4 **COUNT I: VIOLATION OF FAIR DEBT**  
5 **COLLECTION PRACTICES ACT**

6 20. Plaintiff reincorporates by reference all of the preceding paragraphs.  
7

8 **PRAYER FOR RELIEF**  
9

10 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
11 against the Defendants for the following:  
12

13 A. Declaratory judgment that Defendants' conduct  
14 violated the FDCPA;  
15 B. Actual damages;  
16 C. Statutory damages;  
17 D. Costs and reasonable attorney's fees; and,  
18 E. For such other and further relief as may be just and proper.

19 **COUNT II: VIOLATION OF ROSENTHAL**  
20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 21. Plaintiff reincorporates by reference all of the preceding paragraphs.  
22

23 22. To the extent that Defendants' actions, counted above, violated the  
24 RFDCPA, those actions were done knowingly and willfully  
25

26 **PRAYER FOR RELIEF**  
27

28 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
29 against the Defendants for the following:  
30

31 A. Declaratory judgment that Defendant's conduct  
32

1 violated the RFDCPA;

2 B. Actual damages;

3 C. Statutory damages for willful and negligent violations;

4 D. Costs and reasonable attorney's fees,

5 E. For such other and further relief as may be just and proper.

6

7 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

8 Respectfully submitted this 28<sup>th</sup> day of May, 2011.

9

10 11 By: /s Todd M. Friedman

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19 Attorney for Plaintiff

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ETHELYN HOLMES

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

ALLSTATE FINANCIAL SERVICES, INC.; and MICHAEL O'CONNOR, an individual

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV1173 JM BGS

Law Offices of Todd M. Friedman, P.C.  
369 S. Doheny Dr., #415, Beverly Hills, CA 90211

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 395 Property Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Trademark	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input checked="" type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 790 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<b>SOCIAL SECURITY</b>	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b>	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 USC 1692**

## VI. CAUSE OF ACTION

Brief description of cause:  
**Violation of the Fair Debt Collection Practices Act**

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/28/2011

/s Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE